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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Jason Mathis,

Petitioner,

v.

Nethanjah Breitenbach, Warden,  
Northern Nevada Correctional Center;  
James Dzurenda, Director, Nevada  
Department of Corrections; and Aaron  
Ford, Nevada Attorney General,

Respondents.

Case No. 3:22-cv-00091-ART-CLB

**First amended petition for a writ  
of habeas corpus pursuant to 28  
U.S.C. § 2254**

## 1 INTRODUCTION

2 The State accused Mr. Mathis and a co-defendant, Andre Dow, of murdering  
3 two individuals as part of an alleged dispute between the San Francisco and Kansas  
4 City hip hop communities. At Mr. Mathis's trial, the State introduced into evidence  
5 a critical hearsay statement from Mr. Mathis's former romantic partner, Chanel  
6 Rowel. According to the State, Mr. Mathis and Ms. Rowel got into a heated argument  
7 in San Francisco after the murders took place. The police responded to the argument.  
8 When they arrived, Ms. Rowel supposedly told Inspector Robert McMillan that Mr.  
9 Mathis had committed a double homicide and was wanted in Las Vegas. According  
10 to the State and the trial court, Ms. Rowel's statement was an excited utterance and  
11 therefore admissible. The trial court allowed the State to elicit Ms. Rowel's hearsay  
12 statement through Inspector McMillan. That hearsay statement suggested Mr.  
13 Mathis made incriminating comments to Ms. Rowel about the Las Vegas murders.

14 Mr. Mathis is entitled to a new trial based on the admission of this hearsay  
15 statement. First, admitting the statement created a confrontation clause problem.  
16 Second, the trial attorney made ineffective attempts to exclude the statement under  
17 the hearsay rules. Third, Mr. Mathis has strong reason to believe there's undisclosed  
18 impeachment information regarding Inspector McMillan, who testified about this al-  
19 leged hearsay statement; the Court should grant Mr. Mathis subpoena power to in-  
20 vestigate this issue. For these reasons and others, the Court should grant Mr. Mathis  
21 a writ of habeas corpus.

## 22 PROCEDURAL HISTORY

### 23 I. Someone shoots and kills Anthony "Fat Tone" Watkins and Jermaine 24 "Cocaine Cowboy" Akins.

25 This case involves a double homicide in the Las Vegas area. According to the  
26 prosecution, the saga began in Kansas City, Missouri, when someone shot and killed  
27 well known Bay Area hip hop artist Andre "Mac Dre" Hicks in November 2004. Tr.

1 7/24/08 at 146. Mac Dre was in Kansas City for a concert. *Id.* at 147. Someone shot  
2 at his car while he and his entourage were driving. *Id.* Mac Dre died in the shooting.  
3 *Id.* Rumors began to swirl that the person who killed Mac Dre was Anthony "Fat  
4 Tone" Watkins, a hip hop artist from Kansas City. *Id.* at 147-48. The police investi-  
5 gated Mr. Watkins as a potential suspect, but they concluded he had a legitimate  
6 alibi, and they developed strong evidence against other suspects. *Id.* at 148-49. The  
7 police put out a statement clearing Mr. Watkins as a suspect, but rumors nonetheless  
8 continued circulating that Mr. Watkins was the culprit. *Id.* at 151-52.

9 Andre "Mac Minister" Dow is a hip hop artist from the Bay Area. Tr. 7/18/08  
10 at 15-22. He was a contributing artist on albums released by high-profile hip hop  
11 artists like Snoop Dogg. *Id.* at 21-22. As part of his musical career, Mr. Dow was  
12 working to start his own record label and develop up-and-coming hip hop artists.  
13 Mr. Watkins was one of those artists. *Id.* at 20. Between 2003 and 2005, Mr. Dow  
14 was trying to sign Mr. Watkins and was promoting him. *Id.* at 33, 70-72, 85, 168.  
15 After Mac Dre's death, Mr. Dow and Mr. Watkins went to Houston together to meet  
16 with various musicians. *Id.* at 37-55; Tr. 7/24/08 at 204-06. On another occasion after  
17 Mac Dre's death, Mr. Dow and Mr. Watkins went to San Francisco together for a  
18 week. Tr. 7/18/08 at 88-90; Tr. 7/24/08 at 204-06.

19 In May 2005, Mr. Watkins went to Las Vegas for a Snoop Dogg concert. Tr.  
20 7/24/08 at 186. Mr. Watkins believed Mr. Dow was going to introduce him to Snoop  
21 Dogg. *Id.* at 68-69, 188-89. Mr. Watkins made the trip along with his friend Jermaine  
22 "Cocaine Cowboy" Akins and Mr. Watkins's girlfriend Kimberly Brown. *Id.* at 187-  
23 92. They stayed at the MGM casino. *Id.* The trio spent time in Las Vegas with  
24 Mr. Dow. *Id.*

25 On the evening of May 22, 2005, Mr. Dow came to the MGM hotel room to see  
26 the trio; he brought along his girlfriend, Tanisha Aaron. Tr. 7/28/08 at 46-47. The  
27 five of them left the room together. *Id.*; *see also* Tr. 7/24/08 at 172-79. Ms. Brown

1 and Ms. Aaron split off from the group and went to a club at the Bellagio; Ms. Aaron  
2 left Ms. Brown at the club at about 3:00 a.m. Tr. 7/24/08 at 194-96.

3 At about 1:00 a.m. on May 23, 2005, residents of the Southern Highlands area  
4 heard gunshots. Tr. 7/23/08 at 134-51. One of the residents called 911. *Id.* at 147-  
5 48. Another resident noticed a white Pontiac Sunfire driving away at a high rate of  
6 speed with no headlights on; the car failed to stop at a stop sign. *Id.* at 138-39.

7 At about 4:00 a.m., a private security guard was patrolling Southern High-  
8 lands. Tr. 7/23/08 at 123-28. The security guard came across the scene of a double  
9 homicide. *Id.* Mr. Watkins and Mr. Akins were found shot and killed near a blue  
10 Toyota Tercel.

11 The police responded to process the scene. They found an MGM players club  
12 card with Mr. Watkins's name on it. Tr. 7/23/08 at 82. They found a cigarette butt  
13 and beer can near the crime scene. The police crime lab eventually processed those  
14 items for DNA and got DNA reference profiles from Mr. Dow and Mr. Mathis; Mr.  
15 Dow and Mr. Mathis were both excluded from the DNA found on these items. Tr.  
16 7/24/08 at 137.

17 The police collected multiple bullet casings and bullet fragments from the  
18 scene. All the casings were Wolf brand 7.62 x 39 caliber ammunition. Tr. 7/24/08 at  
19 260. The ballistics expert concluded the casings were all fired from the same gun,  
20 consistent with an AK-47 style gun like a WASR-10. *Id.* at 260-63. The ballistics  
21 expert determined the bullet fragments were consistent with two different calibers of  
22 bullets: 7.62 x 39 caliber, as well as a nominal .38 caliber. *Id.* The State therefore  
23 concluded there were two guns used during the murders.

24 The police found a CD in the Toyota Tercel. Fingerprints on the CD matched  
25 Mr. Dow. Tr. 7/25/08 at 91-93. Fingerprints on the exterior of the car matched Ms.  
26 Aaron. *Id.*

1       The coroner examined both bodies and concluded the victims died from gunshot  
2 wounds. Mr. Watkins was shot mostly from behind. Tr. 7/24/08 at 41-42. Mr. Akins's  
3 body contained gunshots that were apparently targeted at his extremities, along with  
4 numerous additional unusual wounds; his wounds were consistent with a prolonged  
5 killing process and potential torture. Tr. 7/24/08 at 29-31, 38, 46-54, 65.

6       The police received an anonymous call alleging the blue Toyota from the crime  
7 scene was associated with a specific address on Zampino Street in Southern High-  
8 lands. Tr. 7/28/08 at 47. The police canvassed the area and spoke to a neighbor who  
9 lived across the street from the Zampino house. *Id.* at 48. He'd seen Mr. Mathis and  
10 Mr. Dow at the house and assumed they were the primary residents. Tr. 7/24/08 at  
11 93. He'd noticed Mr. Dow driving the same blue Toyota found at the crime scene. *Id.*  
12 at 83-84. He became suspicious in May 2005 when he saw lots of cars coming and  
13 going to and from the house, so he began writing down the corresponding license plate  
14 numbers, including for a white Pontiac Sunfire. *Id.* at 80-81. He gave the police that  
15 plate number. Tr. 7/28/08 at 48. It came back to a woman named Lee Denae Laursen.  
16 *Id.* at 48. Ms. Laursen was from Utah and had been living with Mr. Mathis in Las  
17 Vegas. Tr. 7/25/08 at 120-22.

18       The police received a search warrant for the Zampino house. They found var-  
19 ious firearm paraphernalia, including an assault rifle magazine. Tr. 7/25/08 at 77.  
20 Mr. Mathis's fingerprints were on some of the paraphernalia. *Id.* at 87-89. The police  
21 also found registration information for the Toyota Tercel in Ms. Aaron's name. Tr.  
22 7/28/08 at 54-55. They found a copy of the lease for the house; the lease listed  
23 Mr. Mathis as a resident, along with a woman named Desiree Daffron. *Id.* at 55-56.

24       The police ran a check through the Bureau of Alcohol, Tobacco, and Firearms;  
25 they received documentation showing Ms. Daffron purchasing a WASR-10 rifle. Tr.  
26 7/28/08 at 59-60; *see also* Tr. 11/1/05 at 14-16. After publicizing Mr. Mathis as a per-  
27 son of interest in the case, the police received a call from Michael Morrissey, a local

1 gun store owner. Tr. 7/28/08 at 60. According to Mr. Morrissey, Mr. Mathis was a  
2 repeat customer at his store. Tr. 7/24/08 at 211. Mr. Mathis had the store put a  
3 custom folding stock on the WASR-10. *Id.* at 214. The gun takes 7.62 x 39 caliber  
4 ammunition. *Id.* at 217. Mr. Mathis and a woman who wasn't Ms. Daffron came into  
5 the store on May 14, 2005, to buy Wolf brand ammunition for the gun; they were  
6 driving a white Pontiac Sunfire. *Id.* at 219-28.

7 On May 25, 2005, the police found Ms. Laursen's Pontiac Sunfire burned in  
8 Vallejo, California. Tr. 7/24/08 at 97-98. According to the fire department, the fire  
9 was probably intentionally set. *Id.* at 101-04.

10 On July 12, 2005, Inspector Robert McMillan responded to a call for service  
11 based on an argument between Mr. Mathis and the mother of his child, Chanel Rowel  
12 (a/k/a Meka Brown). Tr. 7/28/08 at 10. After he arrived, Ms. Rowel supposedly told  
13 Inspector McMillan that Mr. Mathis had killed two people in Las Vegas and the police  
14 in Las Vegas were looking for him. *Id.* at 13. The police arrested Mr. Mathis for  
15 reasons unrelated to the Las Vegas case. He remained in custody in San Francisco  
16 until his extradition to Las Vegas in this case.

17 The San Francisco police conducted a formal interview with Ms. Rowel on July  
18 12, and the Las Vegas police conducted a second formal interview with her on July  
19 14. 5/18/07 Motion Exhibit C, Exhibit D. She claimed Mr. Mathis spoke to her after  
20 the murder and made multiple incriminating statements about his involvement.  
21 Ms. Rowel then recanted to a defense investigator and claimed no such conversation  
22 ever happened. 1/18/07 Motion Exhibit A; 5/18/07 Motion Exhibit F.

23 On July 14, 2005, the California highway patrol stopped Mr. Dow while he was  
24 driving in a rental car. Tr. 7/25/08 at 110-13. Mr. Dow drove away in the middle of  
25 the stop, and a chase ensued. *Id.* The police later found the car abandoned in a  
26 random driveway. *Id.* at 115-16. The police searched the car and found Ms. Aaron's  
27 name on the rental contract. Tr. 7/28/08 at 28. They also found a DVD with a

1 recording of Mr. Dow hanging out with Snoop Dogg at a party. *Id.* at 26-27. Mr. Dow  
2 later showed up at the police station to turn himself in on a warrant tied to the chase  
3 and bailed himself back out. Tr. 7/25/08 at 116-18.

4 After Mr. Mathis's arrest, Ms. Laursen apparently began associating with  
5 Mr. Dow. Tr. 7/25/08 at 123, 130. The grand jury ultimately indicted Mr. Mathis and  
6 Mr. Dow in November 2005. 11/2/05 Indictment. At the time, an attorney named  
7 Keith Brower was representing Mr. Mathis. Tr. 7/16/08 at 227. Mr. Brower had  
8 previously represented Mr. Dow on another case. *Id.* at 228. Mr. Dow had asked  
9 Mr. Brower to let him know if he got indicted. *Id.* at 229. Once the indictment issued,  
10 Mr. Brower tried calling Mr. Dow unsuccessfully. *Id.* at 230. He eventually tried  
11 calling Ms. Laursen instead and got through. *Id.* He said he wanted to talk to  
12 Mr. Dow, and she passed the phone over. *Id.* He told Mr. Dow he'd been indicted and  
13 advised him to hire another attorney. *Id.* at 230-31.

14 Later that night, Ms. Laursen was found dead, shot in the back of the head in  
15 Fairfield, California. Tr. 7/17/08 at 50-57. Also that night, the Richmond, California,  
16 police found a burned 2002 Saturn registered to Mr. Mathis. *Id.* at 58, 68-70. The  
17 ballistics evidence showed the bullets used in Ms. Laursen's murder were nominal  
18 .38 caliber, although the ballistics evidence from those bullets was inconsistent with  
19 the ballistics evidence from the .38 bullet jacket fragments found at the Las Vegas  
20 crime scene. Tr. 7/16/08 at 88-89; Tr. 7/17/08 at 83.

21 The police had trouble locating and arresting Mr. Dow; he eventually appeared  
22 on America's Most Wanted. Tr. 7/17/08 at 111-13. They eventually got a tip on a  
23 location. *Id.* The police arrived to the location, and Ms. Aaron opened the door. *Id.*  
24 at 118-19. After a couple hours of negotiating, Ms. Aaron let them in. *Id.* at 117-18.  
25 They found Mr. Dow hiding under a pile of clothes. *Id.* at 119-20.

26 Mr. Mathis was in the Clark County Detention Center while awaiting trial in  
27 this case. A corrections officer from the jail testified he had an argument with

1 Mr. Mathis in October 2005. Mr. Mathis supposedly said he was a gangster and a  
 2 double murderer. Tr. 7/25/08 at 136-37. Mr. Mathis maintains he said he was "in"  
 3 for a double *murder*, not that he *was* a double *murderer*. *Id.* at 139; *see* 2/3/12 Petition  
 4 Exhibit 2; PEx. 2.

5 In July 2007, an inmate named Barbara Carpenter approached the police. She  
 6 claimed she was able to speak with Mr. Mathis through vents in the jail. Tr. 7/25/08  
 7 at 22-23. Mr. Mathis had written hip hop songs while in jail and performed some of  
 8 the songs for her. The prosecution thought some of the lyrics were incriminating. *Id.*  
 9 at 26-28. Ms. Carpenter claimed Mr. Mathis confessed to killing two people. *Id.* at  
 10 31-32. According to her, Mr. Mathis said the killing was in retaliation for Mac Dre's  
 11 death. *Id.* at 31-37. He supposedly threatened her if she told the police what he said.  
 12 *Id.* at 26-28, 38.

13 Based on Ms. Carpenter's statement, the police received a warrant to search  
 14 Mr. Mathis's cell for papers containing incriminating statements. Tr. 7/28/08 at 99;  
 15 *see also* 1/4/08 Motion to Suppress. The police seized papers containing rap lyrics,  
 16 including but not limited to lyrics that matched the lyrics Ms. Carpenter quoted. *Id.*  
 17 at 100. At trial, the detective quoted from multiple rap lyrics at length. *Id.* at 100-  
 18 04, 136.

19 **II. The State prosecutes Mr. Dow and Mr. Mathis for the Las Vegas  
 20 murders.**

21 The prosecution brought the case to a grand jury. Tr. 10/25/05; Tr. 11/1/05.  
 22 The grand jury issued an indictment charging Mr. Dow and Mr. Mathis with murder.  
 23 11/2/05 Indictment.

24 Mr. Mathis filed a severance motion. 5/18/07 Motion; *see also* 2/6/08 Motion;  
 25 5/19/08 Brief; 5/27/08 Briefs. The court ordered Mr. Mathis and Mr. Dow's trials sev-  
 26 ered because evidence regarding Ms. Laursen's murder was admissible as to Mr. Dow  
 27 but not as to Mr. Mathis. Tr. 5/29/08 at 3.

1       Mr. Dow's trial proceeded first. He presented an alibi defense, with two wit-  
2 nesses testifying he was at the parking lot of a local radio station hanging out with a  
3 DJ and other individuals from San Francisco at the time of the crime. Tr. 7/18/08 at  
4 104-07, 129-32. The jury found Mr. Dow guilty of two counts of first-degree murder  
5 and two counts of conspiracy to commit murder. 7/21/08 Verdict (Liability). The case  
6 proceeded to a non-capital penalty phase. Mr. Dow was willing to waive jury sentencing,  
7 but the prosecution refused. Tr. 7/21/08 at 22. The jury imposed life without  
8 parole. 7/21/08 Verdict (Penalty).

9       Mr. Mathis's trial proceeded immediately after Mr. Dow's. The jury found him  
10 guilty of two counts of first-degree murder and two counts of conspiracy to commit  
11 murder. 7/29/08 Verdict (Liability). The case proceeded to a non-capital penalty  
12 phase. Mr. Mathis was willing to waive jury sentencing, but the prosecution again  
13 refused. Tr. 7/30/08 at 4-10. The jury imposed life without parole. 7/30/08 Verdict  
14 (Penalty); *see also* 10/8/08 Judgment.

15       Mr. Mathis appealed. *See* 4/22/10 Opening Brief; 6/24/10 Answering Brief. The  
16 Nevada Supreme Court affirmed. 6/30/11 Order; *see also* 7/25/11 Remittitur.

17       Mr. Mathis filed a pro se state post-conviction petition. 2/3/12 Petition. The  
18 state district court denied the petition without appointing counsel. 5/14/12 Notice of  
19 Entry. Mr. Mathis appealed. In the interim, the district court reconsidered its deci-  
20 sion and decided to appoint an attorney for Mr. Mathis. *See* 1/24/13 Request. The  
21 Nevada Supreme Court remanded the case. 4/10/13 Order.

22       The newly appointed state post-conviction attorney filed a counseled supple-  
23 mental petition. 10/30/14 Petition. The state district court conducted an evidentiary  
24 hearing. Tr. 1/24/19; Tr. 4/23/19. The court denied the petition. 7/11/19 Notice of  
25 Entry. Mr. Mathis appealed. *See* 1/3/20 Opening Brief; 1/30/20 Answering Brief;  
26 3/16/20 Reply Brief. The Nevada Supreme Court affirmed. 11/13/20 Order; *see also*  
27 12/8/20 Remittitur.

Mr. Mathis filed a case-initiating document in this Court on or about February 8, 2022. ECF No. 5. He then filed a federal habeas petition on or about July 7, 2022. ECF No. 6. The Court appointed the Federal Public Defender, District of Nevada, to represent Mr. Mathis. ECF No. 11. It authorized counsel to file this first amended petition. ECF No. 15.

## STATEMENT REGARDING 28 U.S.C. § 2254(d)

For each ground for relief in this petition, Mr. Mathis alleges any rulings from the Nevada appellate courts denying him relief on the merits are (or would be) (1) contrary to, and/or an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; and/or (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Mr. Mathis also asserts for the purposes of further review that the standard of review in 28 U.S.C. § 2254(d) violates the U.S. Constitution, specifically the Suspension Clause (Article One, Section Nine, clause two); fundamental principles of separation of powers (Articles One, Two, Three); the ban on cruel and unusual punishments (Amendments Eight and Fourteen); and the guarantee of due process (Amendments Five and Fourteen). *But see Crater v. Galaza*, 491 F.3d 1119 (9th Cir. 2007) (rejecting some of these arguments).

## 1 GROUNDS FOR RELIEF

2 **Ground One: The trial court allowed testimony about a declar-  
3 ant's out-of-court testimonial statement, violating Mr. Mathis's  
4 rights under the Fifth, Sixth, and Fourteenth Amendments to  
the United States Constitution.**

5 **Statement regarding exhaustion:** Mr. Mathis litigated this claim or a sub-  
6 stantially similar claim in his direct appeal.

7 **Statement in support of claim:**

8 At trial, the court allowed the prosecution to elicit evidence from San Francisco  
9 Police Department Inspector Robert McMillan about a statement made by Chanel  
10 Rowel (Mr. Mathis's former romantic partner). According to Inspector McMillan, Ms.  
11 Rowel told him Mr. Mathis had killed two people in Las Vegas. That testimony (and  
12 other related testimony) suggested Mr. Mathis made incriminating statements to Ms.  
13 Rowel. The admission of this testimonial statement violated Mr. Mathis's confronta-  
14 tion clause rights. *See Crawford v. Washington*, 541 U.S. 36 (2004). Mr. Mathis is  
15 therefore entitled to a new trial.

16 This claim involves an incident in the San Francisco area on July 12, 2005.  
17 According to a police report written by Officer Brett Bodisco, the police responded to  
18 a disturbance involving Ms. Rowel, Mr. Mathis, and Ms. Laursen. 10/30/14 Supple-  
19 mental Petition at 767. After the police calmed everyone down, Officer Bodisco spoke  
20 to Ms. Rowel. *Id.* She said Mr. Mathis was upset with her because they'd had an  
21 argument two days earlier about their two-year-old child. *Id.* On July 12, Mr. Mathis  
22 and Ms. Laursen drove by and pulled up to Ms. Rowel while she was walking home.  
23 *Id.* Ms. Rowel ran away, but Mr. Mathis caught up to her and pinned her up against  
24 her back door. *Id.* Her phone rang; Mr. Mathis snatched it out of her hand and threw  
25 it away. *Id.* Ms. Rowel's brother came out and separated the pair. *Id.* Ms. Rowel  
26 wanted Mr. Mathis arrested, so she went back to their car and tried to take the car  
27 keys away so Mr. Mathis couldn't leave. *Id.* Ms. Laursen was still in the car, and

1 she pepper-sprayed Ms. Rowel. *Id.* Ms. Rowel began to stumble around, and  
 2 Mr. Mathis grabbed her and pulled her by her hair until her brother was able to sep-  
 3 arate them again. *Id.* The police arrived shortly after. *Id.* Officer Bodisco also spoke  
 4 to Ms. Rowel's brother, who "reiterated the same as Rowel." *Id.* Nowhere in this  
 5 report does it memorialize Ms. Rowel saying Mr. Mathis either threatened to kill  
 6 Ms. Rowel or referenced the Las Vegas double homicide during the disturbance. In-  
 7 deed, the report fails to check a box for any "spontaneous statements" that Ms. Rowel  
 8 might've made at the scene. *Id.* at 769.

9 The police realized Mr. Mathis had a warrant for his arrest for another charge,  
 10 so they arrested him on that warrant. 10/30/14 Supplemental Petition at 767. They  
 11 also booked him for a domestic violence charge against Ms. Rowel and a driving in-  
 12 fraction. *Id.* at 767-68. The police found cannabis in the car. *Id.* at 768.

13 Inspector Robert McMillan responded to the scene of the disturbance on July  
 14 12, 2005. 10/30/14 Supplemental Petition at 767. That same day, he conducted an  
 15 interview with Ms. Rowel regarding the Las Vegas double homicide. 5/18/07 Motion  
 16 Exhibit C. (Inspector McMillan prepared also prepared a summary report regarding  
 17 the interview. PEx. 1.) According to Ms. Rowel, Mr. Mathis spoke to her after the  
 18 double homicide took place and made detailed incriminating statements about his  
 19 and Mr. Dow's involvement in the crime. The admissions Mr. Mathis allegedly made  
 20 to Ms. Rowel were consistent with the prosecution's theory of the case. Nowhere in  
 21 this interview does Ms. Rowel say Mr. Mathis either threatened to kill Ms. Rowel or  
 22 referenced the Las Vegas double homicide during the July 12 disturbance.

23 Las Vegas detectives travelled to San Francisco to conduct a second interview  
 24 with Ms. Rowel on July 14, 2005. 5/18/07 Motion Exhibit D. Ms. Rowel again claimed  
 25 Mr. Mathis made incriminating statements to her about the crime. She also claimed  
 26 Mr. Mathis made comments during the July 12 incident that were threatening to-  
 27 ward Ms. Rowel and that referenced the Las Vegas case. *Id.* at 13. This statement

1 appears to be the first documented occasion where Ms. Rowel alleged Mr. Mathis  
2 made a threatening statement to her on July 12 involving the Las Vegas case.

3 The domestic violence case proceeded to a preliminary hearing in San Fran-  
4 cisco on July 27, 2005. The prosecution called Officer Robert Yick and Officer Brett  
5 Bodisco to testify about their conversations with Ms. Rowel and her brother. The  
6 defense called Ms. Rowel to testify. She said that when Mr. Mathis showed up at her  
7 residence, she was angry because Mr. Mathis had brought his new girlfriend  
8 Ms. Laursen along instead of coming by himself. 10/30/14 Supplemental Petition at  
9 1355. She started arguing with Ms. Laursen and tried to take the car keys, at which  
10 point Ms. Laursen pepper sprayed her. *Id.* She testified Mr. Mathis didn't hit or  
11 injure her. *Id.* at 1358. She lied to the police about Mr. Mathis hitting and threat-  
12 ening her; she'd made those false statements out of revenge. *Id.* at 1360-62. The  
13 defense also called Ms. Laursen to testify; her testimony was consistent with  
14 Ms. Rowel's. *Id.* at 1368-74.

15 After Ms. Laursen's murder, a detective from the relevant California jurisdic-  
16 tion contacted Inspector McMillan. 6/16/08 Motion Exhibit A. Inspector McMillan  
17 told the detective about the July 12 incident. Nowhere in the report does it appear  
18 Inspector McMillan claimed Ms. Rowel made a spontaneous statement at the scene  
19 of the incident that involved the Las Vegas case.

20 Mr. Mathis's attorney assigned an investigator to speak to Ms. Rowel ahead of  
21 trial. Ms. Rowel signed an affidavit for the investigator on July 4, 2006. 5/18/07  
22 Motion Exhibit F. Her affidavit describes the incident on July 12, 2005, and is con-  
23 sistent with her testimony at the preliminary hearing. According to the affidavit,  
24 once the police arrived at the scene, she told them Mr. Mathis was wanted for murder  
25 in Las Vegas, and she said there were news articles online about the case. She then  
26 gave details about the case to the police. Those details were from her own internet  
27 research; Mr. Mathis never confessed anything to her. The investigator also recorded

1 his corresponding conversation with Ms. Rowel and prepared a transcript of the con-  
2 versation, which is consistent with the affidavit. 1/18/07 Motion Exhibit A.

3 Leading up to trial, the parties made multiple efforts to secure Ms. Rowel's  
4 attendance. The State filed pleadings in 2006 suggesting they were having difficulty  
5 serving her with subpoenas. 2/7/06 Request; 8/16/06 Request. The defense filed a  
6 motion in early 2007 suggesting the court authorize the parties to take her deposition  
7 in advance of trial to prevent any issues securing her appearance. 1/18/07 Motion.  
8 The State opposed the motion. 2/2/07 Opposition; *see also* 2/8/07 Reply; 2/9/07 Sup-  
9 plemental Reply. At a status check, the prosecution said that if Ms. Rowel didn't  
10 appear for trial, then none of her statements would be admissible. Tr. 2/12/07 at 4-5.  
11 On that basis, the court declined to authorize a deposition. *Id.* at 5. At a later status  
12 check, the prosecution changed its mind and suggested it would be appropriate to  
13 depose Ms. Rowel. Tr. 7/17/07 at 7-8; *see also* Tr. 7/10/07 at 16-19. The prosecution  
14 again reiterated Ms. Rowel's statements would be inadmissible unless she appeared  
15 at trial (or was deposed). Tr. 7/10/07 at 16-19.

16 The court conducted another status check. The prosecution said Ms. Rowel  
17 had reached out again to San Francisco investigators and was now claiming she was  
18 threatened into recanting; at this point, she was avoiding service. Tr. 8/14/07 at 9.  
19 The parties again discussed a potential deposition or material witness warrant; they  
20 appeared to agree Ms. Rowel's statements would be inadmissible if she failed to ap-  
21 pear for trial (or a deposition). *Id.* at 24-27.

22 At another status check, the prosecution said the San Francisco authorities  
23 had arrested Ms. Rowel on a material witness warrant, but the San Francisco court  
24 ordered her released. Tr. 2/8/08 at 68-69.

25 During Mr. Dow's trial, the prosecution called Inspector McMillan in part to  
26 discuss the July 12, 2005, incident. The prosecution asked whether Ms. Rowel said  
27 something to Inspector McMillan when he arrived. Tr. 7/17/08 at 107. The defense

1 raised a hearsay objection. *Id.* The court concluded the statement was admissible as  
 2 an excited utterance and overruled the objection. *Id.* Inspector McMillan said  
 3 Ms. Rowel told him “you need to arrest [Mr. Mathis] because he killed two people in  
 4 Las Vegas and they’re looking for him down there.” *Id.* at 107-08.

5 After that testimony, Mr. Mathis filed a motion in limine to exclude this state-  
 6 ment from his trial. 7/21/08 Motion. The motion cited *Crawford*. *Id.* at 4, 6 & n. 1.  
 7 The State opposed the motion. 7/22/08 Response.

8 At the start of Mr. Mathis’s trial, the parties made a record about the issue.  
 9 The prosecution and the court suggested Ms. Rowel would willingly appear at trial at  
 10 Mr. Mathis’s request but was otherwise refusing to cooperate with the State. Tr.  
 11 7/23/08 at 7. Thus, in the court’s view, there was no confrontation problem. *Id.* The  
 12 defense attorney disputed the notion that either he or Mr. Mathis was in contact with  
 13 Ms. Rowel. *Id.* at 7-8. The defense objected under *Crawford*. *Id.* at 8. (According to  
 14 the transcript, the attorney said, “It violates proffer”; in context, the attorney is obvi-  
 15 ously saying the phonetically similar term *Crawford*, not “proffer.”) The parties then  
 16 argued at length about whether Ms. Rowel’s statement to Inspector McMillan (about  
 17 Mr. Mathis killing two people in Las Vegas) was admissible under the hearsay rules.  
 18 *Id.* at 8-14; *see also id.* at 37-39. The court deferred decision. *Id.* at 13-14.

19 The parties continued to discuss this issue at length during the next trial day;  
 20 the court ruled the statement was admissible. Tr. 7/24/08 at 114-27. The defense  
 21 again referenced *Crawford*. *Id.* at 116.

22 Inspector McMillan testified at Mr. Mathis’s trial. He said he responded to the  
 23 scene of the disturbance on July 12, 2005, and saw Mr. Mathis and Ms. Rowel argu-  
 24 ing. Tr. 7/28/08 at 11-13. When Inspector McMillan arrived, Ms. Rowel said to him,  
 25 “he killed two people in Las Vegas they’re looking for him down there.” *Id.* at 13. The  
 26 court overruled the defense’s hearsay objection. *Id.* The prosecutor asked whether  
 27 Inspector McMillan eventually took “a tape recorded statement from her”; he said he

1 did. *Id.* at 14. The defense objected; the court sustained the objection and told the  
2 prosecution not to go there; the defense requested a mistrial. *Id.* The prosecutor  
3 asked if Las Vegas homicide detectives came to San Francisco; the defense requested  
4 a sidebar; and after a bench conference the prosecutor moved on to discuss Mr. Dow's  
5 flight from the traffic stop (which took place when the Las Vegas homicide detectives  
6 were in San Francisco). *Id.* at 14-15.

7       Later that same day at trial, the prosecutor asked a Las Vegas detective  
8 whether Ms. Rowel gave the police non-public information about the crime. Tr.  
9 7/28/08 at 72-73. The defense objected, and the court overruled the objection. *Id.*  
10 The detective said she did. *Id.*

11       During the state post-conviction proceedings, the defense called Ms. Rowel to  
12 testify at an evidentiary hearing. She described the July 12, 2005, incident; her tes-  
13 timony was generally consistent with her San Francisco preliminary hearing testi-  
14 mony. Tr. 1/24/19 at 9-16. She said she told the police Mr. Mathis was wanted for  
15 murder in Las Vegas because she felt betrayed that Mr. Mathis was dating someone  
16 else and she wanted Mr. Mathis to be arrested. *Id.* at 15-16. There was much about  
17 the case she didn't recall, but she maintained that when she told the police Mr.  
18 Mathis made incriminating statements to her, that was a lie. *Id.* at 31-48, 53-54.

19       Inspector McMillan's testimony about Ms. Rowel's hearsay statement—that  
20 Mr. Mathis had killed two people in Las Vegas—was inadmissible under the confron-  
21 tation clause. The statement was testimonial. Ms. Rowel wasn't making this state-  
22 ment in an emergency or for the purpose of receiving aid—rather, she made the state-  
23 ment to Inspector McMillan out of spite, for the express purpose of retaliating against  
24 Mr. Mathis and getting him arrested for the murder charge. *See, e.g.*, 6/16/08 Motion  
25 Exhibit A (Inspector McMillan informs a Las Vegas detective that Ms. Rowel told  
26 Inspector McMillan “that Mathis had told her of his involvement in the double hom-  
27icide in Las Vegas. Being upset with Mathis, [Ms. Rowel] advised this information to

1 Inspector McMillan and Mathis was subsequently arrested"). Because this statement  
 2 was testimonial—it was explicitly designed to incriminate Mr. Mathis and lead to his  
 3 arrest—the confrontation clause forbade its admission into evidence unless  
 4 Ms. Rowel was present at trial for cross-examination. The trial court therefore vio-  
 5 lated Mr. Mathis's confrontation clause rights by admitting this statement. The error  
 6 had a substantial and injurious effect on the verdict. Mr. Mathis is entitled to a new  
 7 trial.

8 **Ground Two: The State seized attorney-client privileged mate-  
 9 rials from Mr. Mathis's jail cell, violating Mr. Mathis's rights un-  
 10 der the Fifth, Sixth, and Fourteenth Amendments to the United  
 States Constitution.**

11 **Statement regarding exhaustion:** Mr. Mathis litigated this claim or a sub-  
 12 stantially similar claim in his direct appeal.

13 **Statement in support of claim:**

14 The police secured a search warrant to search Mr. Mathis's cell for potentially  
 15 incriminating handwritten statements. The lead detective seized a wide variety of  
 16 handwritten materials containing at least one arguably attorney-client privileged  
 17 document. The lead detective personally reviewed the materials for relevance. This  
 18 process violated Mr. Mathis's Sixth Amendment rights. Mr. Mathis is therefore en-  
 19 titled to a new trial.

20 The detective sought the warrant on August 1, 2007. 1/4/08 Motion Exhibit A.  
 21 The warrant application sought "writings/letters of inmate Jason Mathis" from his  
 22 "cell" or his "personal belongings" (i.e., a box of personal belongings stored at the  
 23 prison outside Mr. Mathis's cell). *Id.* at 1 (cleaned up). For unclear reasons, the police  
 24 had previously sought a search warrant for Mr. Mathis's outgoing mail from the jail.  
 25 *Id.* at 2. Pursuant to that warrant, the police copied letters sent by Mr. Mathis to  
 26 another jail inmate, Barbara Carpenter. *Id.* One letter references Mac Dre, along  
 27 with another murdered Bay Area rapper Tupac Shakur, and states they "left it to me

1 . . . I'm handling business." *Id.* (cleaned up). The police thought that statement was  
2 consistent with their theory of motive, i.e., that Mr. Watkins was killed in retaliation  
3 for Mr. Watkins murdering Mac Dre. *Id.*

4 According to the warrant application, the police interviewed Ms. Carpenter at  
5 the jail on July 19, 2007. Ms. Carpenter said she'd received letters from Mr. Mathis  
6 and had spoken to Mr. Mathis through a vent in between their jail cells. 1/4/08 Motion  
7 Exhibit A at 2. Ms. Carpenter said Mr. Mathis admitted to killing two people.  
8 *Id.* at 3. He also performed for Ms. Carpenter a hip hop song he wrote. *Id.* The lyrics  
9 referenced "a boy behind a building with a hole in his chest and he won't say them  
10 things again." *Id.* The police apparently thought that statement was relevant to the  
11 double homicide. *Id.* In turn, the police concluded Mr. Mathis might "possess written  
12 rap lyrics and/or other writings which may implicate him in the murders." *Id.* The  
13 application therefore sought a warrant "to seize any writings/letters written by Jason  
14 Mathis from his cell/personnel belongings at CCDC which may be related to this  
15 case." *Id.*

16 The lead detective received the warrant on August 1, 2007, and executed it the  
17 same day with assistance from a correctional officer. Tr. 2/8/08 at 31. According to  
18 the detective, he set aside certain papers that appeared to be potentially attorney-  
19 client privileged; he "looked at" those documents "long enough to see what they were"  
20 but "did not read them." *Id.* at 32. The detective seized a host of additional papers—  
21 there were so many papers that the detective was unable to review them all for relevance  
22 while the detective was in the cell. *Id.* The detective took additional papers  
23 from Mr. Mathis's property box at the jail. *Id.* at 33. The detective then reviewed the  
24 papers for relevance and sorted them into relevant and irrelevant piles. *Id.* The  
25 detective gave the prosecutor a copy of the documents in the relevant pile and im-  
26 pounded the irrelevant pile. *Id.* at 34-35.

27

1       The defense filed a motion to suppress the documents. 1/4/08 Motion. The  
2 motion argued in part that the warrant impermissibly authorized the seizure of at-  
3 torney-client privileged information. The defense separately filed a motion to dismiss  
4 the case for Sixth Amendment violations. 1/11/08 Motion. The motion again argued  
5 the police seized potentially attorney-client privileged materials. It attached a docu-  
6 ment that the defense maintained was privileged. *Id.* Exhibit A. And the defense  
7 separately filed a motion challenging the prosecution's refusal to return original cop-  
8 ies of the seized privileged documents. 1/31/08 Motion.

9       The State opposed all three motions. It appeared to dispute whether the rele-  
10 vant document was privileged. 2/4/08 Opposition at 7. The defense filed a reply  
11 maintaining that document was privileged and explaining the police seized additional  
12 privileged documents. 2/7/08 Reply.

13       The court held a hearing on the motions. Tr. 2/8/08. The lead detective testi-  
14 fied about the search process. The court provisionally denied the motions but stated  
15 it would review the seized documents from the irrelevant pile for additional poten-  
16 tially privileged materials. *Id.* at 63-64, 71. The court then reviewed those docu-  
17 ments; it looked at all the documents but didn't read everything in detail. Tr. 2/13/08  
18 at 3. The court concluded there were no privileged documents in that pile. *Id.* The  
19 court marked the box of supposedly irrelevant documents as a court exhibit. *Id.* at 5.

20       The execution of the warrant violated Mr. Mathis's Sixth Amendment rights.  
21 The lead detective in this case personally seized large amounts of papers from  
22 Mr. Mathis's cell under the theory Mr. Mathis might've written something incrimi-  
23 nating. The detective proceeded to personally review those papers for relevance and  
24 potential privilege. The police and the prosecution failed to utilize a filter team to  
25 review the documents—instead, the lead detective conducted the entire review by  
26 himself. At least one of the documents was arguably privileged. The Sixth Amend-  
27 ment cannot tolerate a lead detective seizing handwritten materials—including

1 potentially privileged materials—from a defendant’s cell and then personally reviewing  
 2 those materials for relevance and privilege. This Sixth Amendment error is structural,  
 3 and in the alternative it had a substantial and injurious effect on the verdict.  
 4 Mr. Mathis is entitled to a new trial.

5 **Ground Three: Mr. Mathis’s attorney provided ineffective assistance at the liability phase of the trial, violating Mr. Mathis’s rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.**

6 **Statement regarding exhaustion:** Mr. Mathis litigated this claim or a substantially similar claim in his state post-conviction proceedings.

7 **Statement in support of claim:**

8 A criminal defendant has the right to effective assistance of counsel during trial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Here, Mr. Mathis’s trial attorney provided deficient performance during the liability phase of the trial in at least two different respects. Those two errors were prejudicial, both individually and cumulatively. Mr. Mathis is therefore entitled to a new trial.

9 **A. The attorney failed to make appropriate objections to Ms. Rowel’s hearsay statement.**

10 As Ground One explains in detail, the prosecution elicited evidence at trial that Ms. Rowel told Inspector McMillan that Mr. Mathis had committed two murders in Las Vegas. Another detective testified Ms. Rowel then spoke to the police and provided the police with non-public information about the crimes. The jury was therefore led to infer that Mr. Mathis admitted to Ms. Rowel that he committed the double homicide and provided Ms. Rowel with non-public information about the crime that only he could’ve known.

11 Mr. Mathis’s attorney argued Inspector McMillan’s testimony about Ms. Rowel’s statement was inadmissible under the hearsay rules. But the attorney provided a disjointed and confused argument regarding hearsay. The attorney’s

1 argument confused two hearsay rules—the prosecution and the court were focused  
2 on the excited utterance exception, but the attorney’s argument incorrectly focused  
3 on the present sense impression exception. As a result, the attorney made an unper-  
4 suasive argument for exclusion. The error amounted to ineffective assistance.

5 Nevada has an exception to the hearsay rule for present sense impressions.  
6 NRS 51.075. “A statement describing or explaining an event or condition made while  
7 the declarant was perceiving the event or condition, or immediately thereafter, is not  
8 inadmissible under the hearsay rule.” *Id.* Nevada also has an exception to the hear-  
9 say rule for excited utterances. NRS 51.095. “A statement relating to a startling  
10 event or condition made while the declarant was under the stress of excitement  
11 caused by the event or condition is not inadmissible under the hearsay rule.” *Id.*

12 The attorney’s argument confused the two exceptions. The attorney filed a  
13 motion in limine to exclude this testimony. 7/21/08 Motion. The motion argued pri-  
14 marily that the statement couldn’t be an excited utterance because an excited utter-  
15 ance needs to be about the event that causes the excitement. Likewise, during the  
16 court proceedings, the attorney began by saying Ms. Rowel’s statement wasn’t “an  
17 excited utterance because you have to be observing the actual event and commenting  
18 on the event . . . during the period of excitement.” Tr. 7/23/08 at 8.

19 Those arguments were off base. That rule—a declarant must be observing and  
20 commenting on the actual event—covers present sense impressions, not excited ut-  
21 terances. The attorney therefore confused the rules.

22 The attorney continued to argue the issue at trial and provided a hypothetical  
23 involving a declarant who watches a car run a red light and then makes comments  
24 about the car as the declarant is “observing this particular incident.” Tr. 7/23/08 at  
25 10. Again, that involves a present sense impression, not an excited utterance. The  
26 court tried to correct the attorney—it said the statement merely had to “relate[] to  
27

1 the startling event”—but the attorney said the statement had to be made “[w]hile  
 2 observing the event,” which again mixes up the rules. *Id.* at 11.

3 The prosecutor explained the defense was “talking about the statement having  
 4 to occur while the thing is being observed,” which the court agreed was “present sense  
 5 impression.” Tr. 7/23/08 at 11. The court explained, “We’re talking about an excited  
 6 utterance that present sense impression does not have to occur.” *Id.* at 11-12. The  
 7 defense attorney expressed confusion: “oh, it’s under the excitement -- . . . While  
 8 you’re excited -- . . . Under the excitement of the condition that caused your excite-  
 9 ment.” *Id.* at 12. The court invited the parties to submit further case law on the  
 10 issue. *Id.* at 13.

11 The parties continued discussing the issue the next day. The court again sug-  
 12 gested the defense attorney was mixing up present sense impression and excited ut-  
 13 terance. Tr. 7/24/08 at 117. Eventually, the court remarked in a related context, “I’m  
 14 not going to teach you the rules of evidence.” *Id.* at 122.

15 The attorney provided deficient performance during the argument regarding  
 16 the admissibility of Inspector McMillan’s testimony regarding Ms. Rowel’s alleged  
 17 statement. The attorney focused his argument, incorrectly, on the present sense im-  
 18 pression, when the prosecution was seeking to admit the statement under the excited  
 19 utterance exception. The court had to correct the attorney repeatedly. The attorney’s  
 20 arguments fell below reasonable professional standards.

21 The error was prejudicial. Had the attorney had made a legally appropriate  
 22 argument against admitting the statement under the excited utterance exception,  
 23 and had the court responded to the argument reasonably, the court would’ve excluded  
 24 the statement. In turn, there’s a reasonable probability the jury would’ve returned a  
 25 more favorable verdict had this damaging statement not come into evidence.  
 26 Mr. Mathis is therefore entitled to a new trial.

27

1           **B. The attorney failed to object to inadmissible and prejudicial**  
 2           **rap lyrics.**

3           As Ground Two explains in detail, the police seized multiple handwritten  
 4           documents from Mr. Mathis's jail cell. Those handwritten documents included rap lyrics  
 5           Mr. Mathis had written while in custody. The trial court repeatedly suggested the  
 6           rap lyrics were irrelevant and therefore inadmissible. But the defense attorney pro-  
 7           vided substandard efforts to ensure they were excluded. The error amounted to inef-  
 8           fective assistance.

9           The attorney filed a motion in limine that referenced these lyrics (among other  
 10           evidence). 1/4/08 Motion. The attorney also filed a motion to preclude the State from  
 11           calling an expert witness to discuss hip hop culture. 1/29/08 Motion. It appears the  
 12           court never expressly ruled on either motion.

13           At a hearing that occurred soon after the attorney filed the motions, the court  
 14           stated, "I have a hard time finding the relevance with . . . these lyrics, and I don't  
 15           know . . . whether they mean something that has to do with this case." Tr. 2/8/08 at  
 16           38. Later, the court said, "I think the State has some relevance hurdles on some of  
 17           this stuff . . . I'm not saying anything's admissible." *Id.* at 49. At the end of the  
 18           hearing, the court said it would resolve the motion in limine at the next court date  
 19           (February 13, 2008). *Id.* at 245. It doesn't appear the court explicitly ruled on the  
 20           request to exclude the rap lyrics on that date (or subsequently).

21           At another status check, the attorney referenced the lyrics; the court said,  
 22           "They're just crap. They're just crap." Tr. 3/21/08 at 30. It ruled that certain letters  
 23           Mr. Mathis wrote to Ms. Carpenter were admissible, potentially including letters  
 24           Mr. Mathis sent to Ms. Carpenter containing rap lyrics. *Id.* at 30-31. But "if it's just  
 25           [a] general song that has nothing to do with Ms. Carpenter, I don't know that it has  
 26           any materiality." *Id.* at 30. Again, it appears the court never expressly ruled the  
 27           other rap lyrics were either admissible or inadmissible.

1 At trial, the prosecution elicited extensive evidence about the lyrics without  
2 any defense objection, including multiple sets of lyrics with no relevance to Ms. Car-  
3 penter. The lyrics were:

- 4 • “I’m the boogieman. I’ve got the streets terrified. They panickin’ every  
5 time they slide through they say, momma there go that man again, they  
6 found the boy behind the building -- building stiff like a manikin. The  
7 boy was sending threats I bet he won’t say them things again.” Tr.  
8 7/28/08 at 101.
- 9 • “Jill my life is real. If I get convicted for the crime when I get back on  
10 appeal.” Tr. 7/28/08 at 101.
- 11 • “You lay face down, [correctional officers] yellin’, man down, I thought I  
12 was playin’ til I put my murder game down.” Tr. 7/28/08 at 102 (cleaned  
13 up).
- 14 • “Will they have ski mask on plain aces. Give away clean or leave traces  
15 and watch friends of Jason now led to acts of betration. Greed, jealousy  
16 or lust always plays a factor in the homicide. Rolls over til the top blows  
17 then don’t want the other man to be alive. Bullets get shot out the  
18 weapon penetrate flesh when the body they inside -- then the body they  
19 inside, making organs malfunction, shut down, then the body dies. Soul  
20 gets snatched worn on the killer’s belt like a buckle.” Tr. 7/28/08 at 102.
- 21 • “Fuckin’ with the shit they use’n in the Middle East and East Africa,  
22 Chinese made or Russian or Romainian made, hammer your brain like  
23 eggs this is our brain on tumbers. Don’t hold my tongue for mar n\*\*\*\*,  
24 loud talker not me, mother fuckin’ mumbler Jas Coleon good with these  
25 hands, a knock out artist grade A rumbler. I don’t fuck with suckers so  
26 we could never be cool. You ain’t getting money or killin’ shit so I ain’t  
27 feelin’ it.” Tr. 7/28/08 at 102-03.

- 1     • “I carry firearms for offense, not defense, locked and loaded. Chest cav-  
2         ities explode with impact from projectiles.” Tr. 7/28/08 at 103 (cleaned  
3         up).
- 4     • “Held accountable for your actions on disk a whole bunch of murder shit  
5         you was rappin’. This whole mess you got to ask yourself how did it  
6         happen. Now a hole in your chest, your thoughts, you’re graspin’. With  
7         a hole in your chest your last breath you graspin’. Did you think that  
8         vest was going to stop the shit that I up with. Sorry, pal guess you’re  
9         wrong about the vest, you failed a physical challenge. Maybe the morti-  
10         cian can fix your face and make it look like you was smilin’. I’m smilin’  
11         while relaxin’ in the Hawaii islands. Homicide cases investigators to me  
12         try to tie in.” Tr. 7/28/08 at 103.
- 13     • “Thought it was just rap with this much money . . . . N\*\*\*\*s kill and die  
14         for way less just progress.” Tr. 7/28/08 at 103.
- 15     • “At the funeral they gonna be singin’ goin’ up younger. The family know  
16         why he dead, he fucked with the wrong n\*\*\*\*. Ain’t no need for them to  
17         wonder. The boy layin’ in a rented casket with a white tie. After the  
18         service they gonna cremate the bastard. He’s fuckin’ headed and showed  
19         up when it was time to shoot. He froze up and started shooting from a  
20         distance. Shot in the face when he got close. He got his pretty ass pic-  
21         ture printed in those dingy ass shirts and it’s gonna be a few more die’n  
22         from that boy’s turf. You take this beef shit for real, it’s kill or be killed.”  
23         Tr. 7/28/08 at 103-04.
- 24     • “Commit murders leavin’ no traceable evidence.” Tr. 7/28/08 at 104  
25         (cleaned up).
- 26     • “Did I walk up and stand over, keep squeezing and the games over all of  
27         this cause I was living life flashy. You’re a bitch sneakin’ up on me, but

1 I don't fuck for free. Try to prove how tough you be and you squeezed at  
2 me, but you didn't kill a G. 7.26 308's and 223's, I'm stayin' with these.  
3 Ain't playin' with these." Tr. 7/28/08 at 104 (cleaned up).

4 • "I possess in many arsenal and know how to organize murders mothafucka,  
5 the last of a dying breed when you and the bitch got hit. The lung  
6 damage made it hard to breath, the bullet in your spine made it hard to  
7 walk." Tr. 7/28/08 at 104.

8 • "King of the Bay I represent my throne. This is more than music, it's  
9 the way I do it. Thought it was just rap, now you got to face the music."  
10 Tr. 7/28/08 at 136.

11 That last lyric was the last piece of testimony the jury heard in the liability phase of  
12 the trial.

13 These lyrics featured prominently in the prosecution's closing argument. The  
14 prosecution quoted three sets of lyrics at the very start of the initial closing argument.  
15 Tr. 7/29/08 at 4. It quoted one of those sets of lyrics at the very end of the initial  
16 closing argument. *Id.* at 26-27. And it referenced the lyrics yet again at the very end  
17 of the rebuttal closing argument. *Id.* at 83-85.

18 The defense attorney provided deficient performance by failing to secure a ruling  
19 on the motion in limine and by failing to object to the introduction of these lyrics at  
20 trial. The attorney correctly filed a motion in limine. While the court apparently  
21 never definitively ruled on the motion (except potentially insofar as the lyrics ap-  
22 peared in letters that Mr. Mathis sent to Ms. Carpenter), the court repeatedly sug-  
23 gested the lyrics were irrelevant and therefore inadmissible. The attorney should've  
24 ensured the court ruled on the motion in limine. In the alternative, the attorney  
25 should've objected at the time of trial. During the post-conviction evidentiary hear-  
26 ing, the attorney said he argued to keep out the rap lyrics and the court rejected the  
27 argument. Tr. 4/23/19 at 24-30. To the contrary, it appears the court never explicitly

1 ruled on the motion, and indeed the court telegraphed its view that the lyrics were  
2 irrelevant (except potentially to the extent they tied into Ms. Carpenter). As the at-  
3 torney's testimony indicates, there was no strategic reason to avoid securing a ruling  
4 or avoid objecting; rather, the attorney erroneously concluded the court had denied  
5 the motion in limine and so erroneously failed to take those steps. Indeed, the Nevada  
6 Supreme Court indicated in the post-conviction appeal that the attorney provided  
7 deficient performance regarding this issue because most of the lyrics were irrelevant  
8 (or because any probative value was outweighed by the danger of unfair prejudice).

9 The error was prejudicial. Had the attorney objected or insisted on a ruling,  
10 and had the court responded reasonably, the court would've excluded the lyrics—as  
11 it telegraphed it would. Had the court excluded the lyrics, there's a reasonable prob-  
12 ability the jury would've reached a more favorable verdict. Indeed, the lyrics were  
13 highly damaging other bad acts evidence that portrayed Mr. Mathis as a person with  
14 a propensity toward violent behavior, and the jury received no limiting instruction  
15 regarding the lyrics. Mr. Mathis is therefore entitled to relief.

16 **Ground Four: Mr. Mathis's attorney provided ineffective assis-  
17 tance at the penalty phase of the trial, violating Mr. Mathis's  
18 rights under the Fifth, Sixth, and Fourteenth Amendments to  
the United States Constitution.**

19 **Statement regarding exhaustion:** Mr. Mathis litigated this claim or a sub-  
20 stantially similar claim in his state post-conviction proceedings.

21 **Statement in support of claim:**

22 The right to effective assistance of counsel extends to a non-capital sentencing  
23 or penalty phase. Here, Mr. Mathis's attorney expressed a total unwillingness to  
24 participate meaningfully in the penalty phase. The error amounts to either ineffec-  
25 tive assistance or a constructive denial of counsel. Mr. Mathis is entitled to a new  
26 penalty phase.

27

1       If the jury convicts a defendant of first-degree murder in Nevada, the parties  
2 have the right to a penalty phase on the first-degree murder charge, even in a non-  
3 capital case. The parties can waive the penalty phase and have the court conduct the  
4 sentencing, but the parties need to agree to waive the penalty phase.

5       The transcript of the penalty phase appears to begin mid-argument: the court  
6 explains to the defense attorney that the prosecution is unwilling to waive the penalty  
7 phase. Tr. 7/30/08 at 4. The defense attorney says, “[Y]ou can sentence him to the  
8 max. . . . Go ahead and sentence him to the max.” *Id.* at 4. “I’m telling you you can  
9 sentence him to the max. This is a waste of time.” *Id.* at 5. “It’s futile to have this.”  
10 *Id.* “Whatever Your Honor chooses, whether it be the max or not, we are open to  
11 having you sentence him to that.” *Id.* at 6. At that point, the attorney backtracked  
12 slightly, suggesting he wasn’t offering to “stipulat[e] to the max.” *Id.* Then the at-  
13 torney asked, “Can I have an associate sit in for me during this?” *Id.* The court  
14 responded, “No.” *Id.* at 6. The attorney said, “It’s not going to matter. It doesn’t  
15 matter.” *Id.* The court said, “You owe it to that man there to sit in here on this case.”  
16 *Id.* The attorney said Mr. Mathis didn’t care, and the court again said no. *Id.* at 6-7.

17       The attorney continued to rant. “This is called being a sore winner. . . . A waste  
18 of court time, taxpayer money, you name it across the board. Sentence him to the  
19 max, Your Honor.” Tr. 7/30/08 at 7. Soon after, one of the prosecutors said the de-  
20 fense attorney was calling the other prosecutor a “fat, sloppy fucker and a slob.” *Id.*  
21 at 10. While the prosecutor was making that statement, the defense attorney said  
22 “Slob.” The attorney then said, “You know. Walks like a duck, talks like a duck. . . .  
23 The truth is an absolute defense to anything that is hurtful.” *Id.* The court admon-  
24 ished the attorney to “act professional” because “the jury is coming in.” *Id.*

25       The defense attorney waived an opening statement. Tr. 7/30/08 at 11. He de-  
26 clined to cross-examine the State’s first two witnesses. *Id.* at 17, 19. He conducted a  
27 brief cross-examination of the third witness, the lead detective; the cross-examination

1 focused on Ms. Rowel. *Id.* at 40-46. He declined to cross-examine the State's fourth  
 2 witness. *Id.* at 49. The defense briefly called one witness, a defense investigator, to  
 3 discuss Ms. Rowel. *Id.* at 50-56. The defense presented no mitigation evidence what-  
 4 soever involving Mr. Mathis's character.

5 Mr. Mathis presented a disastrous allocution. He said he didn't know the vic-  
 6 tims, so he couldn't "express any remorse." Tr. 7/30/08 at 59. He said "these type of  
 7 things do happen within the streets." *Id.* The attorney asked him what he would do  
 8 with his life if the jury sentenced him to life with parole and he received parole.  
 9 Mr. Mathis answered, "I'm not going to do no 40 years. I'm going to get back on ap-  
 10 peal in close to five years." *Id.* at 60. "My mentality is like, excuse my language, I'm  
 11 like, fuck it, if you give me life without parole it's the same as 40, without life, or  
 12 whatever." *Id.* at 61. "[I]f you give me life without parole, my mentality is going to  
 13 be like, fuck it, excuse me, and if you give me 40 to life, my mentality is going to be  
 14 the same way." *Id.*

15 The defense presented a brief closing argument that barely exceeds a full tran-  
 16 script page. Tr. 7/30/08 at 66-68. The jury elected to impose life without parole. *Id.*  
 17 at 70-71.

18 The attorney testified at a state post-conviction hearing. He said he knew  
 19 Mr. Mathis was angry with the verdict, which was partly why they both wanted to  
 20 waive the penalty hearing; likewise, the attorney knew Mr. Mathis was likely to al-  
 21 ienate the jury during allocution and recommended against Mr. Mathis giving an  
 22 allocution. Tr. 4/23/19 at 30-34. The attorney couldn't say whether they discussed  
 23 the penalty phase before the liability phase started. *Id.* at 34-35. The attorney said  
 24 there wasn't much mitigation, and Mr. Mathis's mother refused to testify. *Id.* at 35,  
 25 39, 48. He admitted he began swearing at the prosecutor because the prosecutor  
 26 wouldn't waive the penalty hearing. *Id.* at 50-51.

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1       The attorney provided deficient performance at the penalty phase—indeed, the  
2 performance was so atrocious that it amounts to a constructive denial of counsel. The  
3 attorney was belligerent on the record because the prosecutor wouldn't waive the  
4 penalty phase. The attorney repeatedly suggested he would stipulate to the maxi-  
5 mum sentence; at one point, he appeared to walk that offer back, then he made it  
6 again. He asked if he could leave and have an associate fill in for him. As his state-  
7 ments indicate, he was completely disinterested in and unwilling to conduct a penalty  
8 phase. His attitude showed in his performance. He waived an opening statement.  
9 He chose to cross-examine only one of the four State's witnesses and called only one  
10 witness of his own. The testimony he elicited from these two witnesses was focused  
11 solely on Ms. Rowel and had nothing to do with Mr. Mathis directly. He presented  
12 no evidence whatsoever about Mr. Mathis's character, upbringing, or any other rele-  
13 vant mitigation topics. He failed to prepare Mr. Mathis to provide an appropriate  
14 allocution, and Mr. Mathis's allocution was utterly disastrous. He provided a weak  
15 and brief closing argument. His conduct during the penalty phase failed to come  
16 anywhere close to professional representation.

17       The error was prejudicial. The attorney's performance was so poor that it  
18 amounted to a constructive denial of counsel, so the Court should presume prejudice.  
19 In the alternative, it's reasonably probable that if the attorney provided a competent  
20 mitigation presentation at sentencing, the jury would've reached a more favorable  
21 penalty verdict. Mr. Mathis is entitled to a new penalty phase.

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**Ground Five: The State failed to disclose impeachment material regarding Inspector Robert McMillan, violating Mr. Mathis's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.**

**Statement regarding exhaustion:** Mr. Mathis hasn't fairly presented this claim in state court.

### **Statement in support of claim:**

Mr. Mathis maintains—on information and belief—that the State failed to disclose material impeachment information regarding Inspector Robert McMillan. *See Brady v. Maryland*, 373 U.S. 83 (1963).

Inspector McMillan was a significant witness at trial. Among other things, and as Grounds One and Three(A) explain, Inspector McMillan provided the foundation for admitting Ms. Rowel's alleged statement to the effect that Mr. Mathis had told her he committed the murders.

Inspector McMillan has a checkered record. One prominent example involves the wrongful conviction of Jamal Trulove for the murder of Seu Kuka in July 2007 (which occurred while Mr. Mathis's case was pending trial). The victim was shot on a sidewalk outside a housing project in San Francisco. The police conducted two photo lineups with an eyewitness, Priscilla Lualemaga. In the first lineup, she failed to identify Mr. Trulove. *Trulove v. D'Amico*, No. 16-cv-050-YGR, 2018 WL 1070899, at \*1 (N.D. Cal. Feb. 27, 2018). During that lineup, one of the officers pointed to the photo of Mr. Trulove and asked her if she was sure it wasn't him; she said she didn't know. *Id.* at \*2. In the second lineup, she identified Mr. Trulove as a potential suspect. *Id.*

Ten months after the murder, in June 2008 (just before Mr. Mathis's trial), Inspector McMillan and another officer conducted a traffic stop of Latisha Meadows and arrested her for possession of drugs and a stolen gun. *See Trulove*, 2018 WL 1070899, at \*2. She claimed she'd witnessed the murder and gave a statement to

1 Inspector McMillan and another officer. *Id.* Some of the details were consistent with  
 2 Ms. Lualemaga's statement, but other details were inconsistent with known facts  
 3 about the murder. *Id.* The police showed her a lineup, and she identified Mr. Trulove.  
 4 *Id.* The police then released her and declined to pursue charges against her. *Id.*

5 A couple months after Inspector McMillan spoke with Ms. Meadows, the state  
 6 of California decided to prosecute Mr. Trulove for the murder. *See Trulove*, 2018 WL  
 7 1070899, at \*3. A jury convicted him, but a state appellate court reversed. *Id.* At a  
 8 retrial, the jury acquitted Mr. Trulove. *Id.* He then filed a federal civil rights lawsuit  
 9 against the police for the wrongful conviction. Inspector McMillan was one of the co-  
 10 defendants.

11 The federal district court denied Inspector McMillan's and most of the other  
 12 co-defendants' motions for summary judgment and their corresponding requests for  
 13 qualified immunity. It found there were sufficient triable issues of fact involving  
 14 Mr. Trulove's claim that Inspector McMillan deliberately or recklessly fabricated ev-  
 15 idence. A reasonable jury could conclude Inspector McMillan "knew, or recklessly  
 16 disregarded, the falsity of Latisha Meadows' identification of [Mr. Trulove] as the  
 17 shooter." *Trulove*, 2018 WL 1070899, at \*5. "The evidence of coercive circumstances  
 18 and reckless disregard of the falsity of Meadows' statement—the circumstances un-  
 19 der which it was obtained, the inconsistencies with the known facts, and the details  
 20 omitted from the officers' reports—is, standing on its own, sufficient to permit a rea-  
 21 sonable jury to find that McMillan . . . knew, or [was] deliberately indifferent to those  
 22 circumstances yielding false information." *Id.*

23 The court also concluded there were sufficient triable issues of fact involving  
 24 Mr. Trulove's claim that Inspector McMillan deliberately or recklessly failed to dis-  
 25 close exculpatory evidence. A reasonably jury could conclude Inspector McMillan and  
 26 other officers "failed to disclose exculpatory evidence concerning the circumstances  
 27

1 under which the eyewitness identifications and statements were obtained.” *Trulove*,  
 2 2018 WL 1070899, at \*6.

3 For similar reasons, the court found triable issues of fact involving  
 4 Mr. Trulove’s corresponding malicious prosecution and conspiracy claims. *Id.* at  
 5 *Trulove*, 2018 WL 1070899, at \*8-\*9.

6 The case proceeded to trial. The jury returned a verdict in favor of Mr. Trulove  
 7 as to two co-defendants (but not Inspector McMillan). *See Trulove v. San Francisco*,  
 8 No. 16-cv-050-YGR, 2018 WL 3429113, at \*1, \*4 n. 2 (N.D. Cal. July 16, 2018).

9 Separately, the San Francisco District Attorney’s office sent a letter to defense  
 10 attorneys on September 23, 2011, acknowledging that Inspector McMillan “has ma-  
 11 terial in his personnel file . . . that may be subject to disclosure under *Brady*.” PEx.  
 12 3. Assuming this *Brady* material existed at the time of Mr. Mathis’s July 2008 trial,  
 13 it should’ve been disclosed to the defense beforehand.

14 Mr. Trulove’s case and the San Francisco DA’s letter both provide Mr. Mathis  
 15 with a good faith basis to allege on information and belief that additional impeach-  
 16 ment information exists involving Inspector McMillan and his potential misconduct  
 17 leading up to the time of Mr. Mathis’s trial. Mr. Mathis is filing a corresponding  
 18 discovery motion seeking to subpoena relevant entities (such as the San Francisco  
 19 Police Department) for potential impeachment information involving Inspector  
 20 McMillan. The Court should grant the discovery motion. If the discovery process  
 21 leads to impeachment information involving Inspector McMillan, Mr. Mathis would  
 22 likely seek leave to amend this petition to include this information in this claim for  
 23 relief.

24 Assuming such impeachment information exists, the State was in constructive  
 25 possession of the information and failed to disclose it to the defense before trial. The  
 26 information was material. As Grounds One and Three(A) explain, Inspector McMil-  
 27 lan was an important witness: notably, he laid the foundation for Ms. Rowel’s alleged

1 statement that Mr. Mathis made incriminating statements to her. Had the jury  
 2 learned about potential impeachment information involving Inspector McMillan, the  
 3 jury would've likely drawn adverse credibility determinations regarding his testi-  
 4 mony. In turn, there's a reasonable probability the jury would've reached a more  
 5 favorable verdict. Assuming the impeachment information exists, Mr. Mathis would  
 6 be entitled to a new trial.

7 **PRAYER FOR RELIEF**

8 Accordingly, Mr. Mathis respectfully requests this Court:

9 1. Issue a writ of habeas corpus to have Mr. Mathis brought before the  
 10 Court so he may be discharged from his unconstitutional confinement;

11 2. Conduct an evidentiary hearing at which proof may be offered concern-  
 12 ing the allegations in this amended petition and any defenses that may be raised by  
 13 the State; and

14 3. Grant such other and further relief as, in the interests of justice, may be  
 15 appropriate.

16 **DECLARATION UNDER PENALTY OF PERJURY**

17 I declare under penalty of perjury under the laws of the United States of Amer-  
 18 ica and the State of Nevada the facts alleged in this petition are true and correct to  
 19 the best of my knowledge, information, and belief.

21 Dated October 13, 2023.

22 Respectfully submitted,

23 Rene L. Valladares  
 24 Federal Public Defender

25 */s/ Jeremy C. Baron*

26 

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 Jeremy C. Baron  
 27 Assistant Federal Public Defender